

AMENDED IN SENATE JUNE 21, 2010

AMENDED IN ASSEMBLY MAY 13, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2485**

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**Introduced by Assembly Member Feuer**

February 19, 2010

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An act to amend *Section 1375.05 of the Civil Code*, and to amend Section 70617 of the Government Code, relating to courts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2485, as amended, Feuer. ~~Uniform filing fees: counsel pro hac vice. Courts: civil actions.~~

(1) *Existing law requires the governing association of a common interest development and the builder of the development to comply with specified dispute resolution procedures. However, existing law, until July 1, 2010, provides that if the parties have not settled the matter, the association or its assignee may file a complaint in superior court, as provided.*

*This bill would extend the operation of these latter provisions to July 1, 2017.*

~~Existing~~

(2) *Existing law specifies various uniform fees for filing specified documents in connection with certain civil proceedings. The fee for filing in the superior court an application to appear as counsel pro hac vice is \$250.*

*This bill would increase the fee for filing in the superior court an application to appear as counsel pro hac vice to \$500. This bill would provide for \$250 of the fee to be deposited into the Immediate and*

Critical Needs Account of the State Court Facilities Construction Fund and for \$250 of the fee to be deposited into the Trial Court Trust Fund.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1375.05 of the Civil Code is amended to*  
2     *read:*

3     1375.05. (a) Upon the completion of the mandatory prefilings  
4     dispute resolution process described in Section 1375, if the parties  
5     have not settled the matter, the association or its assignee may file  
6     a complaint in the superior court in the county in which the project  
7     is located. Those matters shall be given trial priority.

8     (b) In assigning trial priority, the court shall assign the earliest  
9     possible trial date, taking into consideration the pretrial preparation  
10    completed pursuant to Section 1375, and shall deem the complaint  
11    to have been filed on the date of service of the Notice of  
12    Commencement of Legal Proceedings described under Section  
13    1375.

14    (c) Any respondent, subcontractor, or design professional who  
15    received timely prior notice of the inspections and testing  
16    conducted under Section 1375 shall be prohibited from engaging  
17    in additional inspection or testing, except if all of the following  
18    specific conditions are met, upon motion to the court:

19    (1) There is an insurer for a subcontractor or design professional,  
20    that did not have timely notice that legal proceedings were  
21    commenced under Section 1375 at least 30 days prior to the  
22    commencement of inspections or testing pursuant to paragraph (6)  
23    of subdivision (h) of Section 1375.

24    (2) The insurer's insured did not participate in any inspections  
25    or testing conducted under the provisions of paragraph (6) of  
26    subdivision (h) of Section 1375.

27    (3) The insurer has, after receiving notice of a complaint filed  
28    in superior court under subdivision (a), retained separate counsel,  
29    who did not participate in the Section 1375 dispute resolution  
30    process, to defend its insured as to the allegations in the complaint.

31    (4) It is reasonably likely that the insured would suffer prejudice  
32    if additional inspections or testing are not permitted.

1 (5) The information obtainable through the proposed additional  
2 inspections or testing is not available through any reasonable  
3 alternative sources.

4 If the court permits additional inspections or testing upon finding  
5 that these requirements are met, any additional inspections or  
6 testing shall be limited to the extent reasonably necessary to avoid  
7 the likelihood of prejudice and shall be coordinated among all  
8 similarly situated parties to ensure that they occur without  
9 unnecessary duplication. For purposes of providing notice to an  
10 insurer prior to inspections or testing under paragraph (6) of  
11 subdivision (h) of Section 1375, if notice of the proceedings was  
12 not provided by the insurer's insured, notice may be made via  
13 certified mail either by the subcontractor, design professional,  
14 association, or respondent to the address specified in the Statement  
15 of Insurance provided under paragraph (2) of subdivision (e) of  
16 Section 1375. Nothing herein shall affect the rights of an intervenor  
17 who files a complaint in intervention. If the association alleges  
18 defects that were not specified in the prefilings dispute resolution  
19 process under Section 1375, the respondent, subcontractor, and  
20 design professionals shall be permitted to engage in testing or  
21 inspection necessary to respond to the additional claims. A party  
22 who seeks additional inspections or testing based upon the  
23 amendment of claims shall apply to the court for leave to conduct  
24 those inspections or that testing. If the court determines that it must  
25 review the defect claims alleged by the association in the prefilings  
26 dispute resolution process in order to determine whether the  
27 association alleges new or additional defects, this review shall be  
28 conducted in camera. Upon objection of any party, the court shall  
29 refer the matter to a judge other than the assigned trial judge to  
30 determine if the claim has been amended in a way that requires  
31 additional testing or inspection.

32 (d) Any subcontractor or design professional who had notice  
33 of the facilitated dispute resolution conducted under Section 1375  
34 but failed to attend, or attended without settlement authority, shall  
35 be bound by the amount of any settlement reached in the facilitated  
36 dispute resolution in any subsequent trial, although the affected  
37 party may introduce evidence as to the allocation of the settlement.  
38 Any party who failed to participate in the facilitated dispute  
39 resolution because the party did not receive timely notice of the  
40 mediation shall be relieved of any obligation to participate in the

1 settlement. Notwithstanding any privilege applicable to the  
2 prefiling dispute resolution process provided by Section 1375,  
3 evidence may be introduced by any party to show whether a  
4 subcontractor or design professional failed to attend or attended  
5 without settlement authority. The binding effect of this subdivision  
6 shall in no way diminish or reduce a nonsettling subcontractor or  
7 design professional's right to defend itself or assert all available  
8 defenses relevant to its liability in any subsequent trial. For  
9 purposes of this subdivision, a subcontractor or design professional  
10 shall not be deemed to have attended without settlement authority  
11 because it asserted defenses to its potential liability.

12 (e) Notice of the facilitated dispute resolution conducted under  
13 Section 1375 must be mailed by the respondent no later than 20  
14 days prior to the date of the first facilitated dispute resolution  
15 session to all parties. Notice shall also be mailed to each of these  
16 parties' known insurance carriers. Mailing of this notice shall be  
17 by certified mail. Any subsequent facilitated dispute resolution  
18 notices shall be served by any means reasonably calculated to  
19 provide those parties actual notice.

20 (f) As to the complaint, the order of discovery shall, at the  
21 request of any defendant, except upon a showing of good cause,  
22 permit the association's expert witnesses to be deposed prior to  
23 any percipient party depositions. The depositions shall, at the  
24 request of the association, be followed immediately by the  
25 defendant's experts and then by the subcontractors' and design  
26 professionals' experts, except on a showing of good cause. For  
27 purposes of this section, in determining what constitutes "good  
28 cause," the court shall consider, among other things, the goal of  
29 early disclosure of defects and whether the expert is prepared to  
30 render a final opinion, except that the court may modify the scope  
31 of any expert's deposition to address those concerns.

32 (g) (1) The only method of seeking judicial relief for the failure  
33 of the association or the respondent to complete the dispute  
34 resolution process under Section 1375 shall be the assertion, as  
35 provided for in this subdivision, of a procedural deficiency to an  
36 action for damages by the association against the respondent after  
37 that action has been filed. A verified application asserting a  
38 procedural deficiency shall be filed with the court no later than 90  
39 days after the answer to the plaintiff's complaint has been served,  
40 unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the respondent alleging substantial noncompliance with Section 1375, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the respondent has complied with this section.

(h) This section is operative on July 1, 2002, but does not apply to any action or proceeding pending on that date.

(i) This section shall become inoperative on July 1, ~~2010~~, 2017, and, as of January 1, ~~2011~~, 2018, is repealed, unless a later enacted statute that is enacted before January 1, ~~2011~~, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

**SECTION 1.**

*SEC. 2.* Section 70617 of the Government Code is amended to read:

70617. (a) Except as provided in subdivisions (d) and (e), the uniform fee for filing a motion, application, or any other paper requiring a hearing subsequent to the first paper, is forty dollars (\$40). Papers for which this fee shall be charged include the following:

(1) A motion listed in paragraphs (1) to (12), inclusive, of subdivision (a) of Section 1005 of the Code of Civil Procedure.

(2) A motion or application to continue a trial date.

1 (3) An application for examination of a third person controlling  
2 defendant's property under Section 491.110 or 491.150 of the  
3 Code of Civil Procedure.

4 (4) Discovery motions under Title 4 (commencing with Section  
5 2016.010) of Part 4 of the Code of Civil Procedure.

6 (5) A motion for a new trial of any civil action or special  
7 proceeding.

8 (6) An application for an order for a judgment debtor  
9 examination under Section 708.110 or 708.160 of the Code of  
10 Civil Procedure.

11 (7) An application for an order of sale of a dwelling under  
12 Section 704.750 of the Code of Civil Procedure.

13 (8) An ex parte application that requires a party to give notice  
14 of the ex parte appearance to other parties.

15 (b) There shall be no fee under subdivision (a) or (c) for filing  
16 any of the following:

17 (1) A motion, application, demurrer, request, notice, or  
18 stipulation and order that is the first paper filed in an action and  
19 on which a first paper filing fee is paid.

20 (2) An amended notice of motion.

21 (3) A civil case management statement.

22 (4) A request for trial de novo after judicial arbitration.

23 (5) A stipulation that does not require an order.

24 (6) A request for an order to prevent civil harassment.

25 (7) A request for an order to prevent domestic violence.

26 (8) A request for entry of default or default judgment.

27 (9) A paper requiring a hearing on a petition for emancipation  
28 of a minor.

29 (10) A paper requiring a hearing on a petition for an order to  
30 prevent abuse of an elder or dependent adult.

31 (11) A paper requiring a hearing on a petition for a writ of  
32 review, mandate, or prohibition.

33 (12) A paper requiring a hearing on a petition for a decree of  
34 change of name or gender.

35 (13) A paper requiring a hearing on a petition to approve the  
36 compromise of a claim of a minor.

37 (c) The fee for filing the following papers not requiring a hearing  
38 is twenty dollars (\$20):

39 (1) A request, application, or motion for, or a notice of, the  
40 continuance of a hearing or case management conference. The fee

1 shall be charged no more than once for each continuance. The fee  
2 shall not be charged if the continuance is required by the court.

3 (2) A stipulation and order.

4 (3) A request for an order authorizing service of summons by  
5 posting or by publication under Section 415.45 or 415.50 of the  
6 Code of Civil Procedure.

7 (d) The fee for filing a motion for summary judgment or  
8 summary adjudication of issues is two hundred dollars (\$200).

9 (e) The fee for filing in the superior court an application to  
10 appear as counsel pro hac vice is five hundred dollars (\$500). This  
11 fee is in addition to any other fee required of the applicant. Two  
12 hundred fifty dollars (\$250) of the fee collected under this  
13 subdivision shall be transmitted to the state for deposit into the  
14 Immediate and Critical Needs Account of the State Court Facilities  
15 Construction Fund, established in Section 70371.5. Two hundred  
16 fifty dollars (\$250) of the fee collected under this subdivision shall  
17 be transmitted to the state for deposit in the Trial Court Trust Fund,  
18 established in Section 68085.

19 (f) Regardless of whether each motion or matter is heard at a  
20 single hearing or at separate hearings, the fees required by  
21 subdivisions (a), (c), (d), and (e) apply separately to each motion  
22 or other paper filed. The Judicial Council may publish rules to  
23 give uniform guidance to courts in applying fees under this section.